Court No. 3

Civil Writ Petition No. 7029/(M/S) of 2001

Dharam Singh ….Petitioner.

Versus

Presiding Officer Labour Court and another ….Respondents.

Hon'ble Irshad Hussain, J.

By means of this writ petition petitioner prayed for a writ in the nature of certiorari quashing the impugned award dated 26-8-2000 and as a consequence thereof a writ in the nature of mandamus directing the respondent No. 2 to reinstate the petitioner.

The petitioner worked as a Baildar in the establishment of the respondent No. 2 as a muster roll employee since 4-5-1982 to 4-6-1992. He was ceased from doing any work on 4-6-1992 without any prior notice. He raised a labour dispute for redressal of his grievance and the dispute was referred to Labour court under section 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred as Act) by the State Government. The dispute referred was "whether the act of the employer in not taking any work from the petitioner-Baildar w.e.f. 4-6-1992 was proper and legal?." The Labour Court entered into the reference and on consideration of the respective contentions and evidence of the parties was of the opinion that the termination of the petitioner being in contravention of the provisions of the section 6-N of the Act is illegal. However considering the long delay for seeking adjudication of the industrial dispute it moulded the relief and thereby directed the employer to give re-employment to the petitioner treating him to be retrenched workman giving him preference to any new incumbent as contemplated by the provisions of section 6-Q of the Act. In lieu of payment of back wages an amount of Rs. 5000/-, a lump-sum compensation was awarded, besides the cost of the proceedings, assessed at Rs. 500/-

Heard Sri Pankaj Miglani learned counsel for the petitioner and Sri B.D. Kandpal learned Standing Counsel and perused the record in the light of the legal aspects of the case.

The factual aspects of the case as averred in the petition and also as taken note of by the Labour Court, from the material on record before it, are not in dispute. A bare perusal of the award of the Labour Court dated

26-8-2000 make it obvious that the termination of the petitioner Baildar was held to be illegal as being in-contravention of the provisions of section 6-N of the Act. The learned Standing Counsel could not high-light any impropriety in the appraisal and appreciation of the material placed before the Labour Court in coming to the said conclusion. Considering this aspect of the matter there is force in the argument of the learned counsel for the petitioner that the Labour Court having held the termination as being illegal the reinstatement of the petitioner should have legally been directed instead of moulding the relief to bring it within four corner of the provision of section 6-Q of the Act. It was not a case of retrenchment which would have attracted the provisions of section 6-Q of the Act which provide for re-employment of retrenched workman. Even otherwise the termination having been held as illegal, the Labour Court while moulding the relief on account of long delay, could have at the best only restored to refusal to grant full back wages to the petitioner workman. Strangely enough the Labour Court has also adopted this option by observing that on account of long delay there would be no justification to saddle the employer with the responsibility of payment of full back wages and thereby directed the payment of only a consolidated sum of Rs. 5000/- as compensation under this count. While the petitioner workman was being deprived of the full back wages there was no justification in putting him to double jeopardy by giving him relief under section 6-Q of the Act by treating him as a retrenched workman.

In support of the argument learned counsel for the petitioner placed relieance on a decision of the Apex Court pertaining to the dispute between *Ajaib Singh and Sirhind Cooperative Marketing-cum-Processing Service Society Ltd and another; 1999 (82) F.L.R. 137* and wherein the workman was directed to be reinstated with full back wages by the Labour Court despite a long delay in raising the dispute. On a petition by the management the award was set aside on account of delay of 7 years and the Division Bench of the High Court affirmed the judgment in special appeal. The workman took up the matter in appeal to the Apex Court which restored the award of the Labour Court but on account of delay back wages were awarded to the extent of 60% only till the date of the award of the Labour Court and full back wages thereafter till his reinstatement. The principle laid down was that on account of admitted delay the Labour Court could

Appropriately mould the relief denying the workman some part of the back wages. Considering the ratio of the decision I am of the view that the contention of the learned counsel for the petitioned need to be accepted by interfering with impugned award and to grant the relief of re-instatment of the petitioner workman while maintain the remaining part of the impugned award.

In view of the petition partly succeed and is accordingly allowed. The impugned award dated 26-8-2000 is quashed and the respondent No. 2 is directed to re-instate the petitioner forth-with and to pay him full wages from the dated of this order**.**

(Irshad Hussain, J)

Dated 2-9-2003
ISB